



Agricultural Marketing Service

7 CFR Part 989

[AMS-SC-21-0027; SC21-989-1]

Raisins Produced from Grapes Grown in California; Borrowing Authority Under Marketing Order 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: This rule amends Marketing Order 989 (referred to as the "Order"), which regulates the handling of raisins produced from grapes grown in California. This action reinserts Order language that authorizes the Raisin Administrative Committee (RAC) to borrow from commercial lending institutions. The publication on October 26, 2018, of a final rule to amend the marketing order unintentionally removed this borrowing authority. This document is necessary to inform the public of this amendment.

DATES: This direct final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action or notice, unless significant adverse comments are received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comments are received, the Agricultural Marketing Service (AMS) will publish a timely withdrawal of the amendment in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments concerning this direct final rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; or Internet: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist or Andrea Ricci, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 514-1275, Fax: (559) 487-5906, or Email: kathie.notoro@usda.gov or Andrea.Ricci@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington,

DC 20250-0237; Telephone: (202) 720-2491, or Email:

Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. In accordance with Executive Order 13175, AMS has not identified any tribal implications as a result of this rule. This rule falls within a category of regulatory actions that the Office of Management and Budget exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform.

Borrowing authority was originally added to the Order as a result of an amendatory rulemaking in a 2016 final rule (81 FR 44761, July 11, 2016) with unanimous support of RAC members and overwhelming support from industry members. This support is indicated by the results of the producer referendum (81 FR 11678) conducted March 9 - 16, 2016, with 93 percent of voters in support of this provision.

In 2018, a final rule amending the Order was published in the **Federal Register** (83 FR 53965). The 2018 amendments established and revised several provisions of the Order; however, AMS inadvertently omitted a provision in 7 CFR 989.80(c) that authorizes RAC to borrow money from financial institutions. AMS identified the missing provision during a routine file review of the Order and through this action will reinstate the omitted provision.

During the referendum on the 2018 amendments conducted by AMS December 4 - 15, 2017 (82 FR45517), voters did not notice the borrowing authority provision was missing from § 989.80(c). AMS reviewed administrative records from 2016-2018 and reaffirmed that no comments from industry or RAC members addressed the missing provision or expressed the desire to remove borrowing authority from the Order. As well, AMS confirmed that removal of borrowing authority was not discussed at the hearing for the 2018 rulemaking and did not appear as a question on the referendum ballot. RAC confirmed to AMS that having borrowing authority in the Order is in the best interest of the raisin industry and asked for this error to be rectified as soon as possible.

Accordingly, this action restores the borrowing authority provision, which provides the RAC operational flexibility to continue conducting business affairs in the event of interrupted cash flow due to circumstances affecting the collection of assessments.

This correction does not require action by any person or entity regulated by the Order.

OVERVIEW OF CHANGES

Currently, as a result of the inadvertent omission, the Order does not authorize RAC to borrow from a commercial lending institution. This final rule reinserts the following language into § 989.80(c): "In the event cash flow needs of the committee are above cash available

generated by handler assessments, the committee may borrow from a commercial lending institution.” This action restores RAC borrowing authority to the Order.

Classification

This final rule reflects an amendatory change to the Order following an unintentional error. This final rule restores language that was added in a 2016 rulemaking and that was inadvertently omitted in a subsequent rulemaking. AMS believes that this action is not controversial and will not generate adverse comments. However, if AMS does receive significant adverse comments during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses that are subject to such actions so that small businesses will not be unduly or disproportionately burdened by the action. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought through

group action of essentially small entities acting on their own behalf.

Presently, there are approximately 22 handlers of raisins subject to regulation under the Order and approximately 2,000 raisin producers in the regulated area.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

AMS multiplied RAC estimated shipments of 327,323 tons for the 2020 season by the average handler price of \$2,000 per ton to derive total estimated annual handler receipts of \$474,646,000. Dividing the total estimated handler receipts by the number of handlers (22) results in estimated average handler receipts of \$21,574,818.

According to RAC estimates for the most recent year, the average raisin grower price was \$1,300 per ton. Multiplying the average grower price by total 2020 production of 211,115 tons results in \$274,449,500 estimated returns to growers. Dividing estimated grower returns by the total number of growers (2,000) provides an estimated return per grower of \$137,225 for the 2020 season. Thus, the majority of raisin handlers and growers may be classified as small entities according to SBA definitions.

There are no known negative impacts or additional costs incurred by small handlers because of this action.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989 - RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 989.80, revise paragraph (c) to read as follows:

§ 989.80 Assessments.

* * * * *

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. In the event cash flow needs of the committee are above cash available generated by handler assessments, the committee may borrow from a commercial lending institution. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

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Erin Morris, Associate Administrator,
Agricultural Marketing Service.